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# Supreme Court of the United States

**October Term, 1956**

**No. ~~710~~ 76**

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ALBERT L. TROP,
*Petitioner,*

vs.

JOHN FOSTER DULLES, Secretary of State of the United States, and UNITED STATES DEPARTMENT OF STATE.

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## PETITIONER'S REPLY BRIEF

1. The government in its Brief (p. 5, note 3) chides us for our references to the character of the technical desertion here involved. These references are no "indirect reargument" of the court martial conviction, but merely an exposition of the extent to which denationalization has been carried in the case at bar. Surely it is appropriate to point out the extreme scope of a statute when considering its constitutionality, especially when that is not hypothetical.

The statement (*id.*) that petitioner was "apprehended" after "reaching" Moknes (which on the maps is spelled Meknes) is in conflict with the record. Lt. Derr, to whom petitioner and his companion surrendered, testified (R. 4) that he saw the two men while going from Meknes to Rabat (*i. e.*, in the direction of Casablanca where the escape took place, R. 8). And Sergeant Cochran said (R. 4) that at the time the men were walking toward Rabat. Thus petitioner had reversed his steps and was, as he himself said (R. 4) returning to the stockade. While the government

(Brief, pp. 5, 6, note 3) stresses the circumstance that petitioner had said (R. 4) that this return was motivated by hunger and cold, it fails to note that he had also explained his escape as motivated by a hope that he could rejoin his unit in Italy. Even if this could be considered a desertion covered by the Articles of War on the theory that escape from confinement was an attempt to avoid "hazardous duty" or to shirk "important service", it manifests no lack of allegiance to the United States. And that must be the criterion here.

2. The government appears (Brief, p. 5) to concede that allegiance is the determining factor in relation to nationality. But it makes the remarkable argument that acquisition of another nationality, as in *Mackenzie* and *Savorgnan*, has less impact on allegiance than desertion in wartime. That misconceives entirely the basis for the relation between allegiance and nationality. As Professor Zeballos said in the excerpt quoted in our Main Brief (p. 13), that relation exists because of international considerations. Where these are present legislation regulating the situation is permissible so as to avoid international complications. That is the basis of the rulings in all the cases which, until now, have sustained Congressional power. But where international considerations are absent there is no such power.

The question is not whether an individual is injuring his country (Govt. Brief, p. 5) but whether the act involves an indication of allegiance elsewhere. For injuries to the country Congress has provided punishment, here imposable by court martial—in an appropriate case even by death (Articles of War 58, in 1944, 10 U. S. C. 1530, now 10 U. S. C. 885).

3. The government, in its constitutional argument in *Perez* (Govt. Brief in No. 572, pp. 13-49) deals with a number of considerations not applicable to our case. For instance (p. 13) it states that "petitioners" (presumably

including Trop) take the view that Congress may not regulate nationality except to implement a citizen's desire to give up his American citizenship. That is not our position, as our Main Brief makes clear (pp. 15, 16). We there recognized that nationality may be lost despite lack of intention to do so—but only if the acts relied on have direct relation to the acquisition of another nationality. We shall, therefore, ignore as not here relevant the government's discussion at pp. 14-29.

While the government concedes, as it must, that in all the cases in this Court and most of those elsewhere the issue has involved possible international complications, it seeks (p. 33) to extend the area of Congressional power merely because Congress has attempted to do so. It suggests (p. 34) as a generalization that nationality may be lost by any act that is closely related to allegiance. We believe the formulation in our Main Brief (p. 13) more accurately describes the extent of Congressional power: that nationality can be regulated "only where international considerations come into question".

The comment (pp. 36, 37) with respect to the possibility of deportation is not, with respect to petitioner here, academic. For, as pointed out in our Main Brief (p. 21), he returned to the United States after the event which it is claimed has denationalized him.

Finally the Government (p. 49) deals briefly with the particular subsection under review and argues that desertion is a repudiation of an obligation of citizenship so serious as to justify loss of nationality. While it cannot be disputed that desertion is a serious offense, we submit that its relation with nationality, absent contact with the enemy, is too slight to justify the legislation. Moreover, we are here concerned with loss of nationality under circumstances not permitting any inference that there was desertion as popularly conceived—that is, an attempt to abandon the service.

4. One further thought. Implicit in the government's position is the recognition that the occurrence which results in loss of nationality must be one voluntarily undertaken (Perez brief, p. 26). Can it be said that this condition exists here? For there are two occurrences which must exist here: desertion and dishonorable discharge based on court martial conviction. However much it may be argued that the desertion was a voluntary act, surely no one could contend that the dishonorable discharge was. Consequently the impact of the desertion on loss of nationality did not depend on the voluntary act of petitioner, but resulted wholly from action taken by others. The imputation of consent to loss of nationality which has been read into the mind of the citizen in most of the cases dealing with the subject cannot be made here.

Respectfully submitted,

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